

NOTICE OF PRELIMINARY DRAFT OF  
PROPOSED AMENDMENTS TO LOCAL RULES  
U.S. DISTRICT COURT, DISTRICT OF ALASKA

Comments are sought on proposed amendments to Local Rules

[Local Habeas Corpus]

*All Comments received become part of the permanent files on the rules.*

**Written comments on the preliminary draft rules are due not later than June 29, 2012**

Address all communications on rules to:

United States District Court, District of Alaska  
Attention: Court Rules Attorney  
222 West Seventh Avenue, MS 4  
Anchorage, Alaska 99513-7564  
or

e-mail to [AKD-Rules@akd.uscourts.gov](mailto:AKD-Rules@akd.uscourts.gov)

SYNOPSIS OF PROPOSED AMENDMENTS

Rule 2.1 Petitions/Motions

Subdivision (d) added to specifically authorize the petitioner/movant to attach a Memorandum of Law to the petition. The prescribed form does not provide for legal argument or citing legal authority. This replaces the merit brief provided in current Rule 8.2.

Rule 5.1 Answer and Reply; Rule 5.2 Defense Raised by Motion [New]

The Court proposes to add new Rule 5.1 and 5.2 to the Local Habeas Corpus Rules. These rules limit the use of motions to attack a petition. Habeas proceedings by their very nature do not lend themselves to traditional motion practice under the Federal Rules of Civil Procedure. Generally, motion practice in habeas cases is appropriate only when, if granted, the motion will dispose of the entire case. The new rule further provides that Respondent's merit brief must accompany the answer. Under these rules, in the vast majority of habeas cases, there will be only three pleadings: the petition, answer, and reply (traverse). All issues will be joined at one time requiring but a single ruling by the court. Those matters that may be brought by motion prior to an answer are those matters that will, if granted, dispose of the entire petition. In addition to improving judicial efficiency, this rule is intended to address two areas of concern: (1) the use of motions other than as provided in this rule results in piecemeal litigation and frequently unnecessary delay; and (2) habeas petitions are generally brought by prisoners appearing *pro se* who are not familiar with the procedures for responding to motions. The language of Rule 5 itself and the accompanying Advisory Committee Notes imply that in the usual case the answer is the appropriate vehicle for raising defenses to individual claims.

Rule 5.2 (c) makes clear that the filing of a motion before the answer is purely optional and the failure to raise an affirmative defense by a separate motion does not waive that defense.

Rule 8.2 Merit Briefs

Abrogated and replaced by Rule 2.1(d) and Rule 5.1(b). The provision for separate merit briefing after the reply (traverse) is filed is abrogated. Merit briefing is to accompany the pleadings permitted by the national rules.

## PROPOSED RULES

### Rule 2.1 Petitions/Motions

#### (a) **Form.**

(1) A petition under 28 U.S.C. § 2254 must be in the form provided by the clerk of the court.

(2) A motion under 28 U.S.C. § 2255 must be in the form provided by the clerk of the court.

(b) **Definition of Petitioner.** For convenience in these rules, the term “petitioner” includes the moving party under 28 U.S.C. § 2255 where the context requires

#### (c) **Deficient Form.**

(1) Unless the court orders otherwise, a deficient or incomplete petition or motion returned to the petitioner must be corrected and returned to the clerk not more than thirty (30) days after its return by the clerk.

(2) A deficient or incomplete petition or motion that is not corrected and returned to the clerk within the time specified in paragraph (1) will be summarily dismissed.

(d) **Memorandum of Law.** The petition or motion may be accompanied by a separate memorandum containing the legal argument and authorities supporting the relief requested.

#### Related Provisions:

Rule 2, Section 2254 Rules    Petition

Rule 2, Section 2255 Rules    Motion

### Rule 5.1. Answer and Reply

(a) **Answer.** Except as otherwise provided in Rule 5.2 or order of the court, all affirmative defenses that may be raised under the Federal Rules of Civil Procedure or the Section 2254 Rules and Section 2255 Rules, may not be raised by motion, but must be included in the answer filed under Rule 5 of the Section 2254 Rules and Section 2255 Rules.

(b) **Respondent’s Memorandum of Law.** Respondent’s legal arguments in support of the answer are to be set forth in a document filed concurrently with but separate from the answer.

(c) **Reply.** Unless otherwise ordered by the court, a reply to the answer is due not later than twenty-eight (28) days after the Respondent serves and files an answer.

#### Related Provisions:

Rule 5, Section 2254 Cases    The Answer and Reply

Rule 5, Section 2255 Cases    The Answer and Reply

### Rule 5.2. Defenses Raised by Motion

(a) **Rule 12(b) Motions.** Respondent may raise the defenses specified in Federal Rule of Civil Procedure 12(b) by motion filed prior to filing of an answer.

(b) **Timeliness Defense.** If all claims are barred by the applicable limitations period, Respondent may raise that defense by a separate motion to dismiss filed prior to the filing of an answer, otherwise the defense of untimeliness to individual claims must be addressed in the answer.

(c) **Failure to File a Motion.** The failure of the Respondent to file a motion as provided in subsections (a) and (b) does not preclude the Respondent from raising the affirmative defense in the answer.

Related Provisions:

Fed. R. Civ. P. 12	Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing
D.Ak. LR 7.1	Motion Practice
D.Ak. HCR 5.1	Answer and Reply

**Rule 8.2 Merit Briefs** [Abrogated]